STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U.S.C. § 2072. **Rules of procedure and evidence; power to prescribe.**

* * *

(b) Such rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Fed.R.Civ.P. 50(b)

(b) Renewal of Motion for Judgment After Trial; Alternative Motion for New Trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. A motion for a new trial under Rule 59(b) may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

(1994 version).

Fed.R.Civ.P. 50(b)

(b) Renewing Motion for Judgment After Trial: Alternative Motion for a New Trial. If, for any reason, the court does not grant a motion for judgment as a matter of law made at the close of all evidence, the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. The movant may renew its request for judgment as a matter of law by filing a motion no later than 10 days after entry of judgment – and may alternatively request a new trial or join a motion for a new trial under Rule 59. In ruling on a renewed motion, the court may:

1. If a verdict was returned:

(A) Allow the judgments to stand,

(B) Order a new trial, or

(C) Direct entry of judgment as a matter of law; or

2. If no verdict was returned:

(A) Order a new trial, or

(B) Direct entry of judgment as a matter of law.

(Amended version created by order dated April 27, 1995 amending rule effective 12/1/95).

Fed.R.Civ.P. 59(b) and (d)

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

* * *

(d) On Initiative of Court. Not later than 10 days after entry of judgment the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor.

(1994 version).

Fed.R.Civ.P. 59(b) and (d)

(b) Time for Motion. Any motion for a new trial shall be filed no later than 10 days after entry of the judgment.

* * *

(d) On Court's Initiative; Notice; Specifying Grounds. No later than 10 days after entry of judgment the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. When granting a new trial on its own initiative or for a reason not stated in a motion, the court shall specify the grounds in its order.

(Amended version of rule effective December 1, 1995).

The Supreme Court order dated April 27, 1995, found at 131 L.Ed.2d xcii, provides as follows:

ORDERED:

1. That the Federal Rules of Civil Procedure for the United States District Courts be, and they hereby are, amended by including therein amendments to Civil Rules 50, 52, 59, and 83.

2. That the foregoing amendments to the Federal Rules of Civil Procedure shall take effect on December 1, 1995, and shall govern all proceedings in civil cases thereafter commenced, and, insofar as just and practicable, all proceedings and civil cases then pending.

3. That THE CHIEF JUSTICE be, and hereby is, authorized to transmit to the congress the foregoing amendments to the Federal Rules of Civil Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code [28 U.S.C.S. Section 2072].

Fed.R.Ev. 104. PRELIMINARY QUESTIONS

(a) Questions of Admissibility Generally. Preliminary questions concerning the qualification of a person to be a witness, the existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) Relevancy Conditioned on Fact. When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

(c) Hearing of Jury. Hearings on the admissibility of confessions shall in all cases be conducted out of the hearing of the jury. Hearings on other preliminary matters shall be so conducted when the interests of justice require, or when an accused is a witness and so requests.

(d) Testimony by Accused. The accused does not, by testifying upon a preliminary matter, become subject to cross-examination as to other issues in the case.

(e) Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.

Fed.R.Ev. 702. TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion otherwise.

Fed.R.Ev. 705. DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION

The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

AMENDMENT VII OF UNITED STATES CONSTITUTION

CIVIL TRIALS

In Suits of common law, where the value and controversy shall exceed $20.00, the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.